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RICHARD W. [unclear]
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NORTHERN DISTRICT OF CALIFORNIA

Dawniell Zavala (State Bar No. 253130)
HOLME ROBERTS & OWEN LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105-2994
Telephone: (415) 268-2000
Facsimile: (415) 268-1999
Email: dawniell.zavala@hro.com

Attorneys for Plaintiffs,
SONY BMG MUSIC ENTERTAINMENT;
UMG RECORDINGS, INC.; WARNER
BROS. RECORDS INC.; and BMG MUSIC

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
DIVISION

BZ

SONY BMG MUSIC ENTERTAINMENT, a
Delaware general partnership; UMG
RECORDINGS, INC., a Delaware corporation;
WARNER BROS. RECORDS INC., a Delaware
corporation; and BMG MUSIC, a New York
general partnership,

Plaintiffs,

v.

JOHN DOE,

Defendant.

CASE NO.

CV 08

3994

MEMORANDUM OF LAW IN SUPPORT
OF APPLICATION FOR LEAVE TO TAKE
IMMEDIATE DISCOVERY

MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR LEAVE TO TAKE IMMEDIATE DISCOVERY

Case No. _____
#39479 v1

ORIGINAL

I. INTRODUCTION

Plaintiffs, record companies who own the copyrights in the most popular sound recordings in the United States, seek leave of the Court to serve limited, immediate discovery on a third party Internet Service Provider ("ISP") to determine the true identity of Defendant, who is being sued for direct copyright infringement. Without such discovery, Plaintiffs cannot identify the Defendant, and thus cannot pursue their lawsuit to protect their copyrighted works from repetitive, rampant infringement.¹

As alleged in the complaint, the Defendant, without authorization, used an online media distribution system (*e.g.*, a peer-to-peer or "P2P" system) to download Plaintiffs' copyrighted works and/or distribute copyrighted works to the public. See Declaration of Carlos Linares ("Linares Decl."), ¶ 18 (attached hereto as **Exhibit A**). Although Plaintiffs do not know the true name of the Defendant,² Plaintiffs have identified Defendant by a unique Internet Protocol ("IP") address assigned to the Defendant on the date and at the time of the Defendant's infringing activity. Id. Additionally, Plaintiffs have gathered evidence of the infringing activities. Id. ¶¶ 14-15, 19. Plaintiffs have downloaded a sample of several of the sound recordings that Defendant illegally distributed and have evidence of every file that Defendant illegally distributed to the public. Id.

Plaintiffs have identified the ISP that provided Internet access to Defendant by using a publicly available database to trace the IP address for Defendant. Id. ¶¶ 12, 18. Here, the ISP is University of California, Santa Cruz ("UC Santa Cruz"). Id. When given a Defendant's IP address and the date and time of infringement, an ISP typically can identify the name and address of the Defendant (*i.e.*, the ISP's subscriber) because that information is contained in the ISP's subscriber activity log files. Id. ¶ 16.³ Plaintiffs' experience is that ISPs typically keep log files of subscriber

¹ Because Plaintiffs do not currently know the identity of the Defendant, Plaintiffs cannot ascertain any of the Defendant's position on this Application.

² When using a P2P system (*e.g.*, Ares, eDonkey, Gnutella, BitTorrent, or DirectConnect), Defendants typically use monikers, or user names, and not their true names. Linares Decl., ¶ 10. Plaintiffs have no ability to determine a Defendant's true name other than by seeking the information from the ISP. Id. ¶¶ 10, 16.

³ ISPs own or are assigned certain blocks or ranges of IP addresses. A subscriber gains access to the Internet through an ISP after setting up an account with the ISP. An ISP then assigns a

activities for only limited periods of time – which can range from as short as a few days, to a few months – before erasing or overwriting the data they maintain. Id. ¶ 25. Plaintiffs alert the ISP to the existence of the copyright claims shortly after identifying the infringing activity and ask the ISP to maintain the log files. In most cases the ISP presents at least some of the information necessary to identify the infringer, but not always. Id.

Plaintiffs now seek leave of the Court to serve limited, immediate discovery on UC Santa Cruz to identify Defendant. Plaintiffs intend to serve a Rule 45 subpoena on UC Santa Cruz seeking documents, including electronically-stored information, sufficient to identify Defendant's true name, current (and permanent) addresses and telephone number, e-mail address, and Media Access Control ("MAC") address. If UC Santa Cruz cannot link the IP address to Defendant, Plaintiffs seek all documents and electronically-stored information relating to the assignment of that IP address at the date and time the IP address was used to infringe Plaintiffs' copyrighted sound recordings. Once Plaintiffs learn Defendant's identifying information, Plaintiffs will attempt to contact that Defendant and attempt to resolve the dispute. If the dispute is not resolved and it is determined that it would be more appropriate to litigate the copyright infringement claims in another jurisdiction, Plaintiffs will dismiss the Defendant from the present lawsuit and re-file in the appropriate jurisdiction. Without the ability to obtain the Defendant's identifying information, however, Plaintiffs may never be able to pursue their lawsuit to protect their copyrighted works from repeated infringement. Id. ¶ 23. Moreover, the infringement may be ongoing and computer evidence may be overwritten or destroyed such that immediate relief is necessary. Id. ¶¶ 21, 24. Thus, the need for the limited, immediate discovery sought in this Application is critical.

II. BACKGROUND

The Internet and P2P networks have spawned an illegal trade in copyrighted works. See MGM Studios Inc. v. Grokster, Ltd., 545 U.S. 913, 923 (U.S. 2005). By downloading P2P software, and logging onto a P2P network, an individual can upload (distribute) or download (copy), without particular IP address in its block or range to the subscriber when that subscriber goes "online." After reviewing the subscriber activity logs (which contain the assigned IP addresses), an ISP can identify its subscribers by name. See Linares Decl., ¶ 16.

1 authorization, countless copyrighted music and video files to or from any other P2P network user
 2 worldwide. See id. at 920 (detailing the process used by infringers to download copyrighted works);
 3 A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004, 1014 (9th Cir. 2001) (stating that infringers use
 4 P2P networks to copy and distribute copyrighted works); Universal City Studios, Inc. v. Reimerdes,
 5 111 F. Supp. 2d 294, 331 (S.D.N.Y.), aff'd sub nom., Universal City Studios, Inc. v. Corley, 273
 6 F.3d 429 (2d Cir. 2001) (describing a viral system, in which the number of infringing copies made
 7 available multiplies rapidly as each user copying a file also becomes a distributor of that file). Until
 8 enjoined, Napster was the most notorious online media distribution system. Grokster, 545 U.S. at
 9 924. Notwithstanding the Napster Court's decision, similar online media distribution systems
 10 emerged that have attempted to capitalize on the growing illegal market that Napster fostered. These
 11 include Ares, KaZaA, eDonkey, BitTorrent, DirectConnect, and Gnutella, among others. Linares
 12 Decl., ¶ 6. Despite the continued availability of such systems, there is no dispute that the uploading
 13 and downloading of copyrighted works without authorization is copyright infringement. Napster,
 14 239 F.3d at 1014-15; In re Aimster Copyright Litig., 334 F.3d 643 (7th Cir. 2003), cert. denied, 124
 15 S. Ct. 1069 (2004). Nonetheless, at any given moment, millions of people illegally use online media
 16 distribution systems to upload or download copyrighted material. Linares Decl., ¶ 6. More than 2.6
 17 billion infringing music files are downloaded monthly. L. Grossman, *It's All Free*, Time, May 5,
 18 2003, at 60-69.

19 The propagation of illegal digital copies over the Internet significantly harms copyright
 20 owners, and has had a particularly devastating impact on the music industry. Linares Decl., ¶ 9. The
 21 RIAA member companies lose significant revenues on an annual basis due to the millions of
 22 unauthorized downloads and uploads of well-known recordings that are distributed on P2P networks.
 23 Id. ¶ 9. Evidence shows that the main reason for the precipitous drop in revenues is that individuals
 24 are downloading music illegally for free, rather than buying it. See In re Aimster Copyright Litig.,
 25 334 F.3d at 645.

26 **III. ARGUMENT**

27 Courts routinely allow discovery to identify "Doe" defendants. See Wakefield v. Thompson,
 28 177 F.3d 1160, 1163 (9th Cir. 1999) (error to dismiss unnamed defendants given possibility that

identity could be ascertained through discovery); Valentin v. Dinkins, 121 F.3d 72, 75-76 (2d Cir. 1997) (vacating dismissal; *pro se* plaintiff should have been permitted to conduct discovery to reveal identity of the defendant); Dean v. Barber, 951 F.2d 1210, 1215 (11th Cir. 1992) (error to deny the plaintiff's motion to join John Doe defendant where identity of John Doe could have been determined through discovery); Munz v. Parr, 758 F.2d 1254, 1257 (8th Cir. 1985) (error to dismiss claim merely because the defendant was unnamed; "Rather than dismissing the claim, the court should have ordered disclosure of the Officer Doe's identity"); Maclin v. Paulson, 627 F.2d 83, 87 (7th Cir. 1980) (where "party is ignorant of defendants' true identity . . . plaintiff should have been permitted to obtain their identity through limited discovery").

Indeed, in similar copyright infringement cases brought by Plaintiffs, and/or other record companies, against Doe defendants for infringing copyrights over P2P networks, many courts, including this Court, have granted Plaintiffs' motions for leave to take expedited discovery. See, e.g., Order, Maverick Recording Co. v. Does 1-4, Case No. C-04-1135 MMC (N.D. Cal. April 28, 2004); Order, Arista Records LLC v. Does 1-16, No. 07-1641 LKK EFB (E.D. Cal. Aug. 23, 2007); Order, Sony BMG Music Ent't v. Does 1-16, No. 07-cv-00581-BTM-AJB (S.D. Cal. Apr. 19, 2007); Order, UMG Recordings, Inc. v. Does 1-2, No. CV04-0960 (RSL) (W.D. Wash. May 14, 2004); Order, Loud Records, LLC v. Does 1-5, No. CV-04-0134-RHW (E.D. Wash. May 10, 2004); Order, London-Sire Records, Inc. v. Does 1-4, No. CV 04-1962 ABC (AJWx) (C.D. Cal. Apr. 2, 2004); Order, Interscope Records. v. Does 1-4, No. CV-04-131 TUC-JM (D. Ariz. Mar. 25, 2004) (true and correct copies of these Orders are attached hereto as **Exhibit B**). This Court should not depart from its well-reasoned decisions, or the well-reasoned decisions of other courts that have addressed this issue directly.

Courts allow parties to conduct expedited discovery in advance of a Rule 26(f) conference where the party establishes "good cause" for such discovery. See UMG Recordings, Inc., 2006 U.S. DIST. LEXIS 32821 (N.D. Cal. Mar. 6, 2000); Entertainment Tech. Corp. v. Walt Disney Imagineering, No. Civ. A. 03-3546, 2003 WL 22519440, at *4 (E.D. Pa. Oct. 2, 2003) (applying a reasonableness standard); Semitool, Inc. v. Tokyo Electron Am., Inc., 208 F.R.D. 273, 275-76 (N.D. Cal. 2002); Yokohama Tire Corp. v. Dealers Tire Supply, Inc., 202 F.R.D. 612, 613-14 (D. Ariz.

2001) (applying a good cause standard); Energetics Sys. Corp. v. Advanced Cerametrics, No. 95-7956, 1996 U.S. Dist. LEXIS 2830, *5-6 (E.D. Pa. March 8, 1996) (good cause standard satisfied where the moving party had asserted claims of infringement). Plaintiffs easily have met this standard.

First, good cause exists where, as here, the complaint alleges claims of infringement. See Interscope Records v. Does 1-14, No. 5:07-4107-RDR, 2007 U.S. Dist. LEXIS 73627, *3 (D. Kan. Oct. 1, 2007) (citations omitted) (“Good cause can exist in cases involving claims of infringement and unfair competition); Energetics Sys. Corp., 1996 U.S. Dist. LEXIS 2830 at *5-6 (good cause standard satisfied where the moving party had asserted claims of infringement); see also Semitool, 208 F.R.D. at 276; Benham Jewelry Corp. v. Aron Basha Corp., No. 97 CIV 3841, 1997 WL 639037, at *20 (S.D.N.Y. Oct. 14, 1997). This is not surprising, since such claims necessarily involve irreparable harm to the plaintiff. 4 Melville B. Nimmer & David Nimmer, Nimmer On Copyright § 14.06[A], at 14-103 (2003); see also Taylor Corp. v. Four Seasons Greetings, LLC, 315 F.3d 1034, 1042 (8th Cir. 2003); Health Ins. Ass’n of Am. v. Novelli, 211 F. Supp. 2d 23, 28 (D.D.C. 2002) (“A copyright holder [is] presumed to suffer irreparable harm as a matter of law when his right to the exclusive use of copyrighted material is invaded.”) (quotations and citations omitted); ABKCO Music, Inc. v. Stellar Records, Inc., 96 F.3d 60, 66 (2d Cir. 1996).

Second, good cause exists here because there is very real danger that electronic evidence may be destroyed and the ISP may not long preserve the information that Plaintiffs seek. As discussed above, computer evidence by its very nature is subject to being overwritten. Linares Decl., ¶ 24. Evidence stored on Defendant’s computer may be lost as a result of any delay. Moreover, ISPs typically retain user activity logs containing the information sought for only a limited period of time before erasing or overwriting the data. Linares Decl., ¶ 25. If that information is erased, Plaintiffs will have **no** ability to identify the Defendant, and thus will be unable to pursue their lawsuit to protect their copyrighted works. Id. Where “physical evidence may be consumed or destroyed with the passage of time, thereby disadvantaging one or more parties to the litigation,” good cause for expedited discovery exists. Interscope Records, 2007 U.S. Dist. LEXIS 73627 at *3 (citation omitted); see also Metal Bldg. Components, L.P. v. Caperton, CIV-04-1256 MV/DJS, 2004 U.S.

1 Dist. LEXIS 28854, *10-11 (D.N.M. April 2, 2004) (“Good cause is frequently found . . . when
 2 physical evidence may be consumed or destroyed with the passage of time, thereby disadvantaging
 3 one or more parties to the litigation.”) (citation omitted); Pod-Ners, LLC v. Northern Feed & Bean,
 4 204 F.R.D. 675, 676 (D. Colo. 2002) (allowing the plaintiff expedited discovery to inspect “beans”
 5 in the defendant’s possession because the beans might no longer be available for inspection if
 6 discovery proceeded in the normal course).

7 Third, good cause exists because the narrowly tailored discovery requests do not exceed the
 8 minimum information required to advance this lawsuit and will not prejudice Defendant. See
 9 Semitool, 208 F.R.D. at 276 (“Good cause may be found where the need for expedited discovery, in
 10 consideration of the administration of justice, outweighs the prejudice to the responding party.”).
 11 Plaintiffs seek immediate discovery to identify the Defendant; information that may be erased very
 12 soon. Plaintiffs (who continue to be harmed by Defendant’s copyright infringement, Linares Decl., ¶
 13 9), cannot wait until after the Rule 26(f) conference (ordinarily a prerequisite before propounding
 14 discovery) because there is no known defendant with whom to confer (and thus, no conference is
 15 possible). There is no prejudice to Defendant because Plaintiffs merely seek information to identify
 16 Defendant and to serve him or her, and Plaintiffs agree to use the information disclosed pursuant to
 17 their subpoenas only for the purpose of protecting their rights under the copyright laws. See Metal
 18 Bldg. Components, L.P., 2004 U.S. Dist. LEXIS 28854 at *12 (where “the requested discovery is
 19 relevant and will be produced in the normal course of discovery,” the court was “unable to discern
 20 any prejudice or hardship to Defendant” if discovery is conducted “on an expedited basis.”).

21 Fourth, courts regularly grant expedited discovery where such discovery will “substantially
 22 contribute to moving th[e] case forward.” Semitool, 208 F.R.D. at 277. Here, the present lawsuit
 23 cannot proceed without the limited, immediate discovery Plaintiffs seek because there is no other
 24 information Plaintiffs can obtain about Defendant without discovery from the ISP. As shown by the
 25 Declaration of Carlos Linares, Plaintiffs already have developed a substantial case on the merits
 26 against the infringer. Plaintiffs’ complaint alleges a *prima facie* claim for direct copyright
 27 infringement. Plaintiffs have alleged that they own and have registered the copyrights in the works
 28 at issue, and that Defendant copied or distributed those copyrighted works without Plaintiffs’

1 authorization. See Complaint. These allegations state a claim of copyright infringement. Nimmer
 2 On Copyright § 31.01, at 31-3 to 31-7; Feist Publications, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340,
 3 361 (1991). In addition, Plaintiffs have copies of a sample of several of the sound recordings that
 4 Defendant illegally distributed to the public and have evidence of every file that Defendant illegally
 5 distributed to the public. See Complaint Ex. A; Linares Decl., ¶¶ 18-19. This more complete list
 6 shows 1147 files, many of them sound recordings (MP3 files) that are owned by, or exclusively
 7 licensed to, Plaintiffs. See Linares Decl., ¶ 19. Plaintiffs believe that virtually all of the sound
 8 recordings have been downloaded and/or distributed to the public without permission or consent of
 9 the respective copyright holders. Id. Absent limited, immediate discovery, Plaintiffs will be unable
 10 to obtain redress for any of this infringement.

11 Finally, Plaintiffs request that the Court make clear that UC Santa Cruz is authorized to
 12 respond to the subpoena pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C.
 13 1232g ("FERPA"). Though FERPA generally prohibits disclosure of certain records by federally-
 14 funded educational institutions, it *expressly* provides that information can be disclosed pursuant to
 15 court order. *See* 20 U.S.C. § 1232g(b)(2)(B). While Plaintiffs do not believe FERPA prevents the
 16 disclosure of the information requested in the subpoena,⁴ universities and colleges have expressed
 17 concern about their obligations under FERPA, and some have taken the position that a court order is
 18 required before they will disclose subscriber information. Hence, Plaintiffs seek an appropriate
 19 order explicitly authorizing UC Santa Cruz to comply with the subpoena under 20 U.S.C. §
 20 1232g(b)(2)(B).

21 If the Court grants this Application, Plaintiffs will serve a subpoena on UC Santa Cruz
 22 requesting documents that identify the true name and other information about the Defendant within
 23 15 business days. UC Santa Cruz then will be able to notify its subscribers that this information is
 24 being sought, and Defendant will be able to raise any objections before this Court in the form of a
 25

26
 27 ⁴ Plaintiffs do not concede that FERPA prevents University of California, Santa Cruz, from
 28 disclosing the type of information being requested by Plaintiffs, but believe that a properly framed
 court order will make resolution of that issue unnecessary.

1 motion to quash prior to the return date of the subpoena. Thus, to the extent that Defendant wishes
2 to object, he or she will be able to do so.

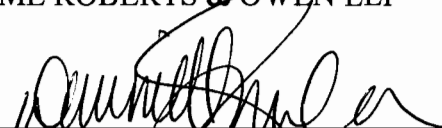
3 **IV. CONCLUSION**

4 For the foregoing reasons, the Court should grant the Application and enter an Order
5 substantially in the form of the attached Proposed Order.

6
7
8 Dated: August 21, 2008

HOLME ROBERTS & OWEN LLP

9
10 By


DAWNIELL ZAVALA

Attorney for Plaintiffs

11 SONY BMG MUSIC ENTERTAINMENT; UMG
12 RECORDINGS, INC.; WARNER BROS.
13 RECORDS INC.; and BMG MUSIC
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1 Dawniell Zavala (State Bar No. 253130)
2 HOLME ROBERTS & OWEN LLP
3 560 Mission Street, 25th Floor
4 San Francisco, CA 94105-2994
5 Telephone: (415) 268-2000
6 Facsimile: (415) 268-1999
7 E-mail: dawniell.zavala@hro.com

8 Attorney for Plaintiffs
9 SONY BMG MUSIC ENTERTAINMENT;
10 UMG RECORDINGS, INC.; WARNER BROS.
11 RECORDS INC.; and BMG MUSIC

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 SONY BMG MUSIC ENTERTAINMENT, a
15 Delaware general partnership; UMG
16 RECORDINGS, INC., a Delaware corporation;
17 WARNER BROS. RECORDS INC., a Delaware
18 corporation; and BMG MUSIC, a New York
19 general partnership,,
20

21 Plaintiff,

22 v.

23 JOHN DOE,

24 Defendant.

Case No. _____

**DECLARATION OF CARLOS
LINARES IN SUPPORT OF
APPLICATION FOR LEAVE TO
TAKE IMMEDIATE DISCOVERY**

1 I, Carlos Linares, have personal knowledge of the facts stated below and, under
2 penalty of perjury, hereby declare:

3 1. I am an attorney and Vice President, Anti-Piracy Legal Affairs for the
4 Recording Industry Association of America, Inc. ("RIAA"), where I have been employed for
5 over six years. My office is located at 1025 F Street, N.W., 10th Floor, Washington, DC 20004.
6 I submit this Declaration in support of Plaintiffs' Application for Leave to Take Immediate
7 Discovery.

8 2. As Vice President, Anti-Piracy Legal Affairs, I am responsible for
9 evaluating and contributing to online strategies for the RIAA and its member record companies
10 who are Plaintiffs in this action, including oversight of the investigations into online
11 infringement of copyrighted sound recordings. As such, this Declaration is based on my
12 personal knowledge, and if called upon to do so, I would be prepared to testify as to its truth and
13 accuracy.

14 **The RIAA's Role in Protecting Its Member Recording Industry Companies From**
15 **Copyright Infringement**

16 3. The RIAA is a not-for-profit trade association whose member record
17 companies create, manufacture, and/or distribute approximately ninety percent of all legitimate
18 sound recordings produced and sold in the United States. The RIAA's member record
19 companies comprise the most vibrant national music industry in the world. A critical part of the
20 RIAA's mission is to assist its member companies in protecting their intellectual property in the
21 United States and in fighting against online and other forms of piracy. All of the Plaintiffs in this
22 action are members of the RIAA.

23 4. As part of that process, the RIAA, on behalf of its members, retains a
24 variety of services from outside vendors to assist with its investigation of the unauthorized
25 reproduction and distribution of copyrighted sound recordings online.

26 **The Internet and Music Piracy**

27 5. The Internet is a vast collection of interconnected computers and computer
28 networks that communicate with each other. It allows hundreds of millions of people around the

1 world to communicate freely and easily and to exchange ideas and information, including
2 academic research, literary works, financial data, music, movies, graphics, and an unending and
3 ever-changing array of other data. Unfortunately, the Internet also has afforded opportunities for
4 the wide-scale piracy of copyrighted sound recordings and musical compositions. Once a sound
5 recording has been transformed into an unsecured digital format, it can be copied further and
6 distributed an unlimited number of times over the Internet, without significant degradation in
7 sound quality.

8 6. Much of the unlawful distribution of copyrighted sound recordings over
9 the Internet occurs via "peer-to-peer" ("P2P") file copying networks or so-called online media
10 distribution systems. The most notorious example of such a system was Napster, which was
11 enjoined by a federal court. Notwithstanding the court's decision enjoining Napster, similar
12 online media distribution systems emerged and attempted to capitalize on the growing illegal
13 market that Napster fostered. These include KaZaA, eDonkey, iMesh, Ares, BitTorrent,
14 DirectConnect, and Gnutella, among others. To this day, some P2P networks continue to operate
15 and to facilitate widespread copyright piracy. At any given moment, millions of people illegally
16 use online media distribution systems to upload or download copyrighted material.

17 7. P2P networks, at least in their most popular form, refer to computer
18 systems or processes that enable Internet users to: (1) index files (including audio recordings)
19 into a share directory on a computer that are then searched for and transferred to other users; (2)
20 search for files stored on other users' computers; (3) transfer exact copies of files from one
21 computer to another via the Internet; and (4) allow users to further distribute the files to other
22 users. P2P networks enable users who otherwise would have no connection with, or knowledge
23 of, each other to offer to each other for distribution and copying files off of their personal
24 computers, to provide a sophisticated search mechanism by which users can locate these files for
25 downloading, and to provide a means of effecting downloads.

26 8. The major record companies generally have not authorized their
27 copyrighted sound recordings to be copied or distributed in unsecured formats by means of P2P
28

1 networks. Thus, the vast majority of the content that is copied and distributed on P2P networks
2 is unauthorized by the copyright owner – that is, the distribution violates the copyright laws.

3 9. The scope of online piracy of copyrighted works cannot be
4 underestimated. The RIAA member companies lose significant revenues on an annual basis due
5 to the millions of unauthorized downloads and uploads of well-known recordings that are
6 distributed on P2P networks by infringers who, in virtually all cases, have the ability to maintain
7 their anonymity to all but the Internet Service Provider (“ISP”) they use to supply them with
8 access to the Internet.

9 10. The persons who commit infringements by using the P2P networks are, by
10 and large, anonymous to Plaintiffs. A person who logs on to a P2P network is free to use any
11 alias (or computer name) whatsoever, without revealing his or her true identity to other users.
12 Thus, Plaintiffs can observe the infringement occurring on the Internet, but do not know the true
13 names or mailing addresses of those individuals who are committing the infringement.

14 **The RIAA’s Identification of Copyright Infringers**

15 11. In order to assist its members in combating copyright piracy, the RIAA
16 retained a third party, MediaSentry, Inc. (“MediaSentry”), to conduct searches of the Internet, as
17 well as file-copying services, for infringing copies of sound recordings whose copyrights are
18 owned by RIAA members. A search can be as simple as logging onto a P2P network and
19 examining files being distributed by others logged onto the network. In gathering evidence of
20 copyright infringement, MediaSentry uses the same functionalities that are built into P2P
21 programs that any user of the software can use on the network.

22 12. Users of P2P networks who distribute files over a network can be
23 identified by using Internet Protocol (“IP”) addresses because the unique IP address of the
24 computer offering the files for distribution can be captured by another user during a search or a
25 file transfer. Users of P2P networks can be identified by their IP addresses because each
26 computer or network device (such as a router) that connects to a P2P network must have a
27 unique IP address within the Internet to deliver files from one computer or network device to
28 another. Two computers cannot effectively function if they are connected to the Internet with the

1 same IP address at the same time. In some cases, more than one computer can access the internet
2 over a single IP address by using network address translation, in which cases the computer port
3 being used provides further identification of the computer engaged in the on-line
4 communication. This is analogous to the telephone system where each location has a unique
5 number (and the port acts much like a specific telephone extension off the main switch board).
6 For example, in a particular home, there may be three or four different telephones, but only one
7 call can be placed at a time to or from that home. Each computer or network device is connected
8 to a network that is administered by an organization like a business, ISP, college, or university.
9 Each network, in turn, is analogous to an area code. The network provider maintains a log of IP
10 address allocations. An IP address can be associated with an organization such as an ISP,
11 business, college, or university, and that organization can identify the P2P network user
12 associated with the specified IP address.

13 13. MediaSentry finds individuals using P2P networks to share music files
14 over the Internet. Just as any other user on the same P2P networks as these individuals would be
15 able to do, MediaSentry is able to detect the infringement of copyrighted works and identify the
16 users' IP addresses because the P2P software being used by those individuals has file-sharing
17 features enabled.

18 14. For each suspected infringer, MediaSentry downloads a number of the
19 music files that the individual is offering to other users on the P2P network. Those music files
20 for each such individual are listed in Exhibit A to the Complaint. MediaSentry assigns an
21 identification number to each individual for which it detects copyright infringement and gathers
22 additional evidence for each individual, such as metadata accompanying each file being
23 disseminated that demonstrates that the user is engaged in copyright infringement. That
24 evidence includes download data files that show for each music file the source IP address, user
25 logs that include a complete listing of all files in the individual's share folder at the time, and
26 additional data that track the movement of the files through the Internet.

27 15. After MediaSentry collects the evidence of infringement, the RIAA
28 engages in a painstaking process to verify whether each individual was infringing. That process

1 relies on human review of evidence supporting the allegation of infringement. For each
2 suspected infringer, the RIAA reviews a listing of the music files that the user has offered for
3 download by others from his or her computer in order to determine whether they appear to be
4 copyrighted sound recordings. The RIAA also listens to the downloaded music files from these
5 users in order to confirm that they are, indeed, copies of sound recordings whose copyrights are
6 owned by RIAA members. Exhibit A to the Complaint lists the details of these downloaded
7 music files. In my role as Vice President, Anti-Piracy, I provide oversight over the review of the
8 lists contained in Exhibit A to the Complaint and hereby attest to the veracity of those lists. The
9 RIAA also reviews the other evidence collected by MediaSentry.

10 **The Subpoena Process to Identify Copyright Infringers**

11 16. The RIAA frequently has used the subpoena processes of Federal Rule of
12 Civil Procedure 45 to obtain the names of infringers from ISPs. The RIAA typically has
13 included in their subpoenas to ISPs an IP address and a date and time on which the RIAA,
14 through its agent, MediaSentry, observed use of the IP address in connection with allegedly
15 infringing activity. In some instances, providing the IP address alone to the ISP has been enough
16 to enable the ISP to identify the infringer. Providing the date and time further assists some ISPs
17 in identifying infringers, especially ISPs that use "dynamic IP addressing" such that a single
18 computer may be assigned different IP addresses at different times, including, for example, each
19 time it logs into the Internet.¹ Some ISPs also ask for the computer port information to further
20 identify the infringer. Once provided with the IP address, plus the date and time of the infringing
21 activity, the infringer's ISP can typically identify the computer from which the infringement
22 occurred (and the name and address of the subscriber that controls that computer), sometimes
23 within a matter of minutes.

24 17. Since 1998, the RIAA and others have used subpoenas thousands of times
25 to learn the names, addresses, telephone numbers, and e-mail addresses of infringers for the
26 purpose of bringing legal actions against those infringers.

27 ¹ ISPs own or are assigned certain blocks or ranges of IP addresses. An ISP assigns a
28 particular IP address in its block or range to a subscriber when that subscriber goes "online."

1 **The RIAA's Identification of the Infringers in This Case**

2 18. In the ordinary course of investigating online copyright infringement, the
3 RIAA became aware that Defendant was distributing files to others on various P2P networks.
4 The user-defined author and title of the files being distributed by Defendant suggested that many
5 were copyrighted sound recordings being disseminated without the authorization of the copyright
6 owners. The RIAA downloaded and listened to a representative sample of the music files being
7 distributed by Defendant and was able to confirm that the files Defendant was distributing were
8 illegal copies of sound recordings whose copyrights are owned by RIAA members. The RIAA
9 also recorded the time and date at which the infringing activity was observed and the IP address
10 assigned to Defendant at the time. See Complaint Exhibit A. The RIAA could not, however,
11 determine the physical location of the users or their identities. The RIAA could determine that
12 Defendant was using University of California, Santa Cruz internet service to distribute the
13 copyrighted files.

14 19. The RIAA also has collected for Defendant a list of the files Defendant
15 was distributing to the public. The list shows 1147 files, many of which are sound recording
16 (MP3) files that are owned by, or exclusively licensed to, Plaintiffs. Because of the voluminous
17 nature of the list, and in an effort not to overburden the Court with paper, I have not attached the
18 list to this Declaration. The list will be made available to the Court upon request. Exhibit A to
19 the Complaint includes the username of the infringer if that was available, the identification
20 number assigned by MediaSentry for the Defendant, and the number of audio files that were
21 being shared by Defendant at the time that the RIAA's agent, MediaSentry, observed the
22 infringing activity.

23 **The Importance of Expedited Discovery in This Case**

24 20. Obtaining the identity of copyright infringers on an expedited basis is
25 critical to stopping the piracy of the RIAA members' copyrighted works.

26 21. First, every day that copyrighted material is disseminated without the
27 authorization of the copyright owner, the copyright owner is economically harmed. Prompt
28

1 identification of infringers is necessary in order for copyright owners to take quick action to stop
2 unlawful dissemination of their works and minimize their economic losses.

3 22. Second, infringement often occurs with respect to sound recordings that
4 have not yet been distributed publicly. Such infringement inflicts great harm on the initial
5 market for new works. New recordings generally earn a significant portion of their revenue
6 when they are first released, and copyright piracy during a recording's pre-release or early
7 release period therefore deprives copyright owners of an important opportunity to reap the
8 benefits of their labor.

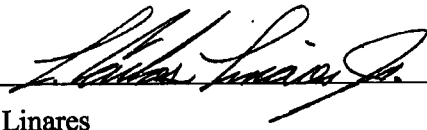
9 23. Third, without expedited discovery, Plaintiffs have no way of serving
10 Defendant with the complaint and summons in this case. Infringement occurs without name tags
11 so Plaintiffs do not have Defendant's name or address, nor do they have an e-mail address for
12 Defendant.

13 24. Fourth, computer evidence by its very nature is subject to being
14 overwritten. At times, Plaintiffs have sought evidence from defendants' computers only to find
15 that the evidence of infringement was destroyed (intentionally or unintentionally). Expedited
16 discovery is critical to allow Plaintiffs to put Defendants on notice of the need to preserve the
17 electronic evidence and avoid the loss of evidence.

18 25. Fifth, ISPs have different policies pertaining to the length of time they
19 preserve "logs" which identify their users. ISPs keep log files of their user activities for only
20 limited periods of time – which can range from as short as a few days, to a few months – before
21 erasing or overwriting the data they maintain. If an ISP does not respond expeditiously to a
22 discovery request, the identification information in the ISP's logs may be erased, making it
23 impossible for the ISP to determine the identity of the infringer and eliminating the copyright
24 owner's ability to take action to stop the infringement. The RIAA notifies the ISPs when it has
25 identified infringement for which it will seek identifying information and requests the ISPs to
26 preserve the information. In most cases the ISPs preserve at least some of the information
27 necessary to identify the infringer, but not always. Some ISPs have indicated they will preserve
28 the information for a limited time.

1 I declare under penalty of perjury under the laws of the United States that the foregoing is
2 true and correct.

3 Executed on August 8, 2008 in Washington, D.C.

4
5 
6 Carlos Linares

COBLENTZ, PATCH, DUFFY & BASS, LLP
 One Ferry Building, Suite 200, San Francisco, CA 94111-4213
 (415) 391-4800 • (415) 989-1663

JEFFREY G. KNOWLES (State Bar # 129754)
 JULIA D. GREER (State Bar # 200479)
 ZUZANA J. SVIHRA (State Bar # 208671)
 COBLENTZ, PATCH, DUFFY & BASS, LLP
 One Ferry Building, Suite 200
 San Francisco, California 94111
 Telephone: (415) 391-4800
 Facsimile: (415) 989-1663

Attorneys for Plaintiffs
 MAVERICK RECORDING CO.; WARNER BROS.
 RECORDS INC.; ARISTA RECORDS, INC.; VIRGIN
 RECORDS AMERICA, INC.; UMG RECORDINGS, INC.;
 INTERSCOPE RECORDS; BMG MUSIC; SONY MUSIC
 ENTERTAINMENT INC.; ATLANTIC RECORDING
 CORP.; MOTOWN RECORD COMPANY, L.P.; and
 CAPITOL RECORDS, INC.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

MAVERICK RECORDING COMPANY, a
 California joint venture; WARNER BROS.
 RECORDS INC., a Delaware corporation;
 ARISTA RECORDS, INC., a Delaware
 corporation; VIRGIN RECORDS AMERICA,
 INC., a California corporation; UMG
 RECORDINGS, INC., a Delaware
 corporation; INTERSCOPE RECORDS, a
 California general partnership; BMG MUSIC,
 a New York general partnership; SONY
 MUSIC ENTERTAINMENT INC., a
 Delaware corporation; ATLANTIC
 RECORDING CORPORATION, a Delaware
 corporation; MOTOWN RECORD
 COMPANY, L.P., a California limited
 partnership; and CAPITOL RECORDS, INC.,
 a Delaware corporation,

Plaintiffs,

vs.

DOES 1 - 4,

Defendants.

CASE NO. C-04-1135 MMC

**[PROPOSED] ORDER GRANTING
 PLAINTIFFS' MISCELLANEOUS
 ADMINISTRATIVE REQUEST FOR
 LEAVE TO TAKE IMMEDIATE
 DISCOVERY**

1 Upon the Miscellaneous Administrative Request of Plaintiffs For Leave To Take
2 Immediate Discovery, the Declaration of Jonathan Whitehead and the exhibit thereto, Plaintiffs'
3 Request for Judicial Notice, and the Declaration of Zuzana J. Svihra, it is hereby:

4 ORDERED that Plaintiffs may serve immediate discovery on the University of
5 California, Berkeley to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena
6 that seeks information sufficient to identify each Doe Defendant, including the name, address,
7 telephone number, e-mail address, and Media Access Control addresses for each Defendant.

8 IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in
9 response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting
10 Plaintiffs' rights under the Copyright Act.

11 Without such discovery, Plaintiffs cannot identify the Doe Defendants, and thus
12 cannot pursue their lawsuit to protect their copyrighted works from infringement.

13
14 Dated: April 28, 2004

James Larson U.S. Magistrate Judge
~~United States District Judge~~

COBLENTZ, PATCH, DUFFY & BASS, LLP
One Ferry Building, Suite 200, San Francisco, CA 94111-4213
(415) 391-4800 • (415) 989-1663

Matthew Franklin Jaksa (CA State Bar No. 248072)
HOLME ROBERTS & OWEN LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105-2994
Telephone: (415) 268-2000
Facsimile: (415) 268-1999
Email: matt.jaksa@hro.com

Attorneys for Plaintiffs,
ARISTA RECORDS LLC; ATLANTIC RECORDING CORPORATION;
BMG MUSIC; CAPITOL RECORDS, INC.; ELEKTRA
ENTERTAINMENT GROUP INC.; INTERSCOPE RECORDS; LAFACE
RECORDS LLC; MAVERICK RECORDING COMPANY; MOTOWN
RECORD COMPANY, L.P.; PRIORITY RECORDS LLC; SONY BMG
MUSIC ENTERTAINMENT; UMG RECORDINGS, INC.; VIRGIN
RECORDS AMERICA, INC.; and WARNER BROS. RECORDS INC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ARISTA RECORDS LLC, a Delaware limited liability
company; ATLANTIC RECORDING
CORPORATION, a Delaware corporation; BMG
MUSIC, a New York general partnership; CAPITOL
RECORDS, INC., a Delaware corporation; ELEKTRA
ENTERTAINMENT GROUP INC., a Delaware
corporation; INTERSCOPE RECORDS, a California
general partnership; LAFACE RECORDS LLC, a
Delaware limited liability company; MAVERICK
RECORDING COMPANY, a California joint venture;
MOTOWN RECORD COMPANY, L.P., a California
limited partnership; PRIORITY RECORDS LLC, a
California limited liability company; SONY BMG
MUSIC ENTERTAINMENT, a Delaware general
partnership; UMG RECORDINGS, INC., a Delaware
corporation; VIRGIN RECORDS AMERICA, INC., a
California corporation; and WARNER BROS.
RECORDS INC., a Delaware corporation,

Plaintiffs,

v.

DOES 1-16,

Defendants.

CASE NO. 07-1641 LKK EFB

**ORDER GRANTING EX PARTE
APPLICATION FOR LEAVE TO TAKE
IMMEDIATE DISCOVERY**

1 Upon the Plaintiffs' *Ex Parte* Application for Leave to Take Immediate Discovery,
2 the Declaration of Carlos Linares, and the accompanying Memorandum of Law, it is hereby
3 ORDERED that Plaintiffs may serve immediate discovery on University of California, Davis to
4 obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks documents that
5 identify each Doe Defendant, including the name, current (and permanent) addresses and telephone
6 numbers, e-mail addresses, and Media Access Control addresses for each Defendant.

7 Although parties must generally meet and confer prior to seeking expedited
8 discovery, that requirement may be dispensed if good cause is shown. *See* Fed. R. Civ. P. 26(d);
9 *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275-76 (N.D. Cal. 2002). Here, the
10 plaintiffs have presented evidence that the subpoena is necessary to identify the defendants, serve
11 them with the complaint and summons, and prosecute their claims of copyright infringement. *See*
12 *Gillespie v. Civletti*, 629 F.2d 637, 642 (9th Cir. 1980) ("where the identity of alleged defendants
13 will not be known prior to the filing of a complaint . . . the plaintiff should be given an opportunity
14 through discovery to identify the unknown defendants, unless it is clear that discovery would not
15 uncover the identities, or that the complaint would be dismissed on other grounds."). Plaintiffs have
16 further averred that records kept by internet service providers ("ISP") such as the University of
17 California, Davis, are regularly destroyed, sometimes on a daily or weekly basis. *See* Linares
18 Declaration, at ¶ 24. Based on the foregoing, the court finds that plaintiffs have demonstrated good
19 cause for the expedited discovery.

20 The disclosure of this information is ordered pursuant to 20 U.S.C. § 1232g(b)(2)(B).
21 Consistent with that provision, if and when the University of California, Davis is served with a
22 subpoena, it shall, within five business days, give written notice to the subscribers whose identities
23 are to be disclosed in response to the subpoena. Such written notice may be achieved by messages
24 sent via electronic mail. If the University of California, Davis, and/or any defendant wishes to move
25 to quash the subpoena, they shall do so before the return date of the subpoena.

1 IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in
2 response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting
3 Plaintiffs' rights under the Copyright Act.

4
5 Dated: August 23, 2007.

6 
7 EDMUND F. BRENNAN
8 UNITED STATES MAGISTRATE JUDGE
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FILED

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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY RM DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SONY BMG MUSIC ENTERTAINMENT, a
Delaware general partnership; UMG
RECORDINGS, INC., a Delaware corporation;
ARISTA RECORDS LLC, a Delaware limited
liability company; CAPITOL RECORDS, INC., a
Delaware corporation; WARNER BROS.
RECORDS INC., a Delaware corporation;
INTERSCOPE RECORDS, a California general
partnership; PRIORITY RECORDS LLC, a
California limited liability company; ATLANTIC
RECORDING CORPORATION, a Delaware
corporation; FONOVisA, INC., a California
corporation; MAVERICK RECORDING
COMPANY, a California joint venture; MOTOWN
RECORD COMPANY, L.P., a California limited
partnership; ELEKTRA ENTERTAINMENT
GROUP INC., a Delaware corporation; BMG
MUSIC, a New York general partnership; VIRGIN
RECORDS AMERICA, INC., a California
corporation; and LAFACE RECORDS LLC, a
Delaware limited liability company,

Plaintiff,

v.

DOES 1 - 16,

Defendants.

Case No. **07CV 0581 BTM** **AJB**

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' EX PARTE
APPLICATION FOR LEAVE TO
TAKE IMMEDIATE DISCOVERY**

1 Upon the Plaintiffs' *Ex Parte* Application for Leave to Take Immediate Discovery, the
2 Declaration of Carlos Linares, and the accompanying Memorandum of Law, it is hereby:

3 ORDERED that Plaintiffs may serve immediate discovery on SBC Internet Services, Inc. to
4 obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks documents that
5 identify each Doe Defendant, including the name, current (and permanent) addresses and telephone
6 numbers, e-mail addresses, and Media Access Control addresses for each Defendant. The disclosure
7 of this information is ordered pursuant to 47 U.S.C. § 551(c)(2)(B).

8 IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in response to the
9 Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under
10 the Copyright Act.

11
12 DATED: 4-19-07

By: 
United States District Judge

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 1040 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UMG RECORDINGS, INC., a Delaware corporation; ATLANTIC RECORDING CORPORATION, a Delaware corporation; WARNER BROS. RECORDS INC., a Delaware corporation; SONY MUSIC ENTERTAINMENT INC., a Delaware corporation; BMG MUSIC, a New York general partnership; and VIRGIN RECORDS AMERICA, INC., a California corporation,

Plaintiffs,

V.

DOES 1 - 2,

Defendants.

No. C04-0960(c)-L

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR LEAVE TO
TAKE IMMEDIATE DISCOVERY**

Upon the Motion of Plaintiffs for Leave to Take Immediate Discovery and the supporting Memorandum of Law, and the declaration of Jonathan Whitehead and the exhibit thereto, it is hereby:

ORDERED that Plaintiffs may serve immediate discovery on Microsoft Corporation to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks information sufficient to identify each Doe Defendant, including the name, address, telephone number, e-mail address, and Media Access Control addresses for each Defendant.

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR LEAVE TO
TAKE IMMEDIATE DISCOVERY**
Page 1

YARMUTH WILSON CALFO P.L.L.C.
THE IDX TOWER
925 FOURTH AVENUE, SUITE 2500
SEATTLE, WA 98104
T 206 516 3800 F 206 516 3888

1 IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in
2 response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of
3 protecting Plaintiffs' rights under the Copyright Act.

4
5 Dated: May 14, 2004

M. S. Casnik
United States District Judge

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MAY 10 2004

JAMES R. CARSEN, CLERK
DEPUTY
SPokane, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LOUD RECORDS, LLC, a
Delaware corporation; WARNER
BROS. RECORDS INC., a
Delaware corporation; ATLANTIC
RECORDING CORPORATION, a
Delaware corporation; VIRGIN
RECORDS AMERICA, INC., a
California corporation; PRIORITY
RECORDS LLC, a California
limited liability company;
ELEKTRA ENTERTAINMENT
GROUP INC., a Delaware
corporation; BMG RECORDINGS,
INC. a Delaware corporation;
ARISTA RECORDS, INC., a
Delaware corporation; BMG
MUSIC, a New York general
partnership; SONY MUSIC
ENTERTAINMENT INC., a
Delaware corporation; MAVERICK
RECORDING COMPANY, a
California joint venture; and
CAPITOL RECORDS, INC., a
Delaware corporation,

Plaintiffs,

v.

DOES 1-5,

Defendants.

NO. CV-04-0134-RHW

**ORDER GRANTING PLAINTIFFS'
MOTION FOR LEAVE TO TAKE
IMMEDIATE DISCOVERY**

Before the Court is Plaintiffs' Motion for Leave to Take Immediate
Discovery (Ct. Rec. 7). The Plaintiffs, members of the Recording Industry
Association of America, Inc. ("RIAA"), have filed a complaint alleging that DOES

**ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO TAKE
IMMEDIATE DISCOVERY * 1**

1 1-5 illegally engaged in uploading and downloading copyrighted recordings
2 through www.KaZaA.com, a peer to peer ("P2P") internet service (Ct. Rec. 1).
3 While Plaintiffs are unable to identify the Does, they collected records of
4 Defendants' Internet Protocol ("IP") address, the times the downloads or uploads
5 took place, and information regarding the specific recordings that were
6 downloaded or uploaded. The Plaintiffs were able to ascertain from Defendants'
7 IP addresses that they were utilizing Gonzaga University as their Internet Service
8 Provider ("ISP"). Plaintiffs seek statutory damages under 17 U.S.C. § 504(c),
9 attorneys fees and costs pursuant to 17 U.S.C. § 505, and injunctive relief under
10 17 U.S.C. §§ 502 and 503.

11 In their Motion for Leave to Take Immediate Discovery, the Plaintiffs seek
12 leave to serve Gonzaga University, the ISP for Does 1-5, with a Rule 45 Subpoena
13 Duces Tecum, requiring Gonzaga University to reveal the Defendant's names,
14 addresses, email addresses, telephone number, and Media Access Control
15 ("MAC") addresses.

16 The Ninth Circuit has held that "where the identity of alleged defendants
17 will not be known prior to the filing of a complaint . . . the plaintiff should be
18 given an opportunity through discovery to identify the unknown defendants,
19 unless it is clear that discovery would not uncover the identities, or that the
20 complaint would be dismissed on other grounds." *Gillespie v. Civiletti*, 629 F.2d
21 637, 642 (9th Cir. 1980). Presumably, the discovery device anticipated by this
22 ruling was Rule 45, under which a party may compel a nonparty to produce
23 documents or other materials that could reveal the identities. *See Pennwalt Corp.*
24 *v. Durand-Wayland, Inc.*, 708 F.2d 492 (9th Cir. 1983). The Court finds that this
25 instance presents the very situation indicated by *Gillespie*. The Plaintiffs' case
26 relies on the disclosure of the Does' identities, and those identities are likely
27 discoverable from a third party.

28 Under Rule 26(d), Rule 45 subpoenas should not be served prior to a Rule

1 26(f) conference unless the parties can show good cause. Fed. R. Civ. P. 26(d) ("a
2 party may not seek discovery from any source before the parties have conferred as
3 required by Rule 26(f) . . . [u]nless the court upon motion . . . orders
4 otherwise"); see *Semitool, Inc. V. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275-
5 76 (N.D. Cal. 2002). The Plaintiffs have presented compelling evidence that the
6 records kept by ISP providers of IP addresses are regularly destroyed. Thus, good
7 cause has been shown.

8 Accordingly, **IT IS ORDERED** that:

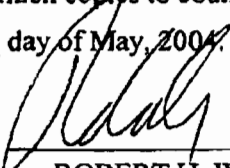
9 1. Plaintiffs' Motion for Leave to Take Immediate Discovery (Ct. Rec.
10 7) is **GRANTED**.

11 2. Plaintiffs are **GIVEN LEAVE** to serve immediate discovery on
12 Gonzaga University to obtain the identity of each Doe Defendant by serving a
13 Rule 45 subpoena duces tecum that seeks each Doe Defendants' name, address,
14 telephone number, email address, and Media Access Control address. As agreed
15 by Plaintiffs, this information disclosed will be used solely for the purpose of
16 protecting their rights under the copyright laws.

17 3. Plaintiffs are **ORDERED** to review Local Rule 7.1(g)(2) regarding the
18 citation of unpublished decisions. All unpublished decisions cited to the Court
19 have been disregarded.

20 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
21 enter this order and to furnish copies to counsel of record.

22 **DATED** this 10 day of May, 2004.

23
24 
25 **ROBERT H. WHALEY**
26 United States District Judge

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**ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO TAKE
IMMEDIATE DISCOVERY * 3**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CIVIL MINUTES - GENERAL

Case No. CV 04-1962 ABC (AJWx)

Date: April 2, 2004

Title: LONDON-SIRE RECORDS, INC., et. al., v. DOES 1-4

=====

PRESENT:

HON. ANDREW J. WISTRICH, MAGISTRATE JUDGE

Ysela Benavides
Deputy Clerk

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:
None Present

ATTORNEYS PRESENT FOR DEFENDANTS:
None Present

ORDER REGARDING PLAINTIFFS' EX PARTE APPLICATION FOR LEAVE TO TAKE IMMEDIATE DISCOVERY

Plaintiffs are thirteen record companies who have filed a lawsuit against four unnamed "doe" defendants for alleged copyright infringement. Plaintiffs filed a motion for leave to take immediate discovery on March 23, 2004. [Notice of Ex Parte Application for Leave to Take Immediate Discovery ("Notice") filed March 23, 2004]. Plaintiffs allege that defendants, using an online peer-to-peer ("P2P") media distribution system, made available for distribution, and in fact distributed, copyrighted songs without license or other authority to do so, thereby infringing plaintiffs' copyrights. [See Memorandum of Law in Support of Ex Parte Application For Leave to Take Immediate Discovery ("Memorandum") filed March 23, 2004, at 2]. Plaintiffs have acquired the Internet Protocol ("IP") addresses assigned to each of the four defendants on the dates and times of the infringing activity. [Memorandum 2]. Using a public database, plaintiffs determined that the subject IP addresses belong to the University of Southern California ("USC"). [Memorandum 2-3]. As an Internet Service Provider ("ISP"), USC maintains a subscriber activity log indicating which of its subscribers were assigned the IP addresses in question on the relevant dates and times. [Memorandum 3]. In plaintiffs' experience, most ISPs maintain subscriber activity logs for only a short period of time before destroying the information contained in the logs. [Memorandum 3]. From the subscriber logs, USC can use the IP addresses and temporal information provided by plaintiffs to identify the true names, street addresses, phone numbers, e-mail addresses, and Media Access Control ("MAC") addresses for each defendant. [Memorandum 3]. Plaintiffs ask this Court to allow immediate issuance of a subpoena directing USC to produce defendants' names and the other personal information described above so that plaintiffs may contact defendants in an attempt to negotiate a resolution to plaintiffs' claims, or failing that, to add defendants as named parties to this litigation.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES--GENERAL

Generally, parties must meet and confer prior to seeking expedited discovery. See Fed. R. Civ. P. 26(f). That requirement, however, may be dispensed with if good cause is shown. See Semitool, Inc. v. Tokyo Electron Am., Inc., 208 F.R.D. 273, 275-76 (N.D. Cal. 2002). Plaintiffs have shown good cause. The true identities of defendants are unknown to plaintiffs, and this litigation cannot proceed without discovery of defendants' true identities. [See Memorandum 7-9].

Subject to the following qualifications, plaintiffs' ex parte application for leave to take immediate discovery is granted.

If USC wishes to file a motion to quash the subpoena or to serve objections, it must do so before the return date of the subpoena, which shall be no less than twenty-one (21) days from the date of service of the subpoena. Among other things, USC may use this time to notify the subscribers in question.

USC shall preserve any subpoenaed information or materials pending compliance with the subpoena or resolution of any timely objection or motion to quash.

Plaintiffs must serve a copy of this order on USC when they serve the subpoena.

Any information disclosed to plaintiffs in response to the Rule 45 subpoena must be used by plaintiffs solely for the purpose of protecting plaintiffs' rights under the Copyright Act as set forth in the complaint.

IT IS SO ORDERED.

cc: Parties

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Interscope Records, et al.,
Plaintiffs,
v.
Docs 1 - 4,
Defendants.

No. CV-04-131 TUC - JM

ORDER

Pending before the Court is the Plaintiffs' *ex parte* Motion for Leave to Take Immediate Discovery [Docket No. 2]. Upon consideration of the Motion and the supporting Memorandum of Law, and the declaration of Jonathan Whitehead and the exhibit attached thereto, it is hereby:

ORDERED that Plaintiffs' Motion for Leave to Take Immediate Discovery [Docket No. 2] is GRANTED;

IT IS FURTHER ORDERED that Plaintiffs may serve immediate discovery on the University of Arizona to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks information sufficient to identify each Doe Defendant, including the name, address, telephone number, e-mail address, and Media Access Control addresses for each Defendant;

IT IS FURTHER ORDERED that any information disclosed to Plaintiffs in response to the Rule 45 subpoena shall be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under the Copyright Act as set forth in the Complaint;

JM

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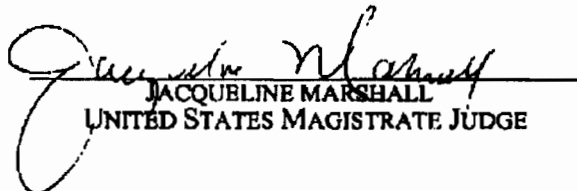
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1 IT IS FURTHER ORDERED that, if and when the University of Arizona is served
2 with a subpoena, within five (5) business days thereof it shall give written notice, which can
3 include use of e-mail, to the subscribers whose identities are to be disclosed in response to
4 the subpoena. If the University of Arizona and/or any Defendant wishes to move to quash
5 the subpoena, they shall do so before the return date of the subpoena, which shall be twenty-
6 five (25) business days form the date of service;

7 IT IS FURTHER ORDERED that, if and when the University of Arizona is served
8 with a subpoena, the University of Arizona shall preserve the data and information sought
9 in the subpoena pending resolution of any timely filed motion to quash;

10 IT IS FURTHER ORDERED that counsel for Plaintiffs shall provide a copy of this
11 Order to the University of Arizona when the subpoena is served.

12 Dated this 25th day of March, 2004.

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16 JACQUELINE MARSHALL
17 UNITED STATES MAGISTRATE JUDGE
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